# [GB] Regulator Proposes Wholesale Price Controls on Sky's Premium Content

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Ofcom, the UK communications regulator, is consulting on access to premium content. This follows complaints from four operators about the operation of the UK pay-TV sector. The regulator proposes that Sky premium content should be made subject to a wholesale must-offer requirement and price control.

Ofcom set out a set of criteria to assess the pay-TV sector; consumer choice, innovation and pricing. It defined premium content as that which is likely to be most effective in driving pay-TV subscriptions, through a significant appeal to a broad audience and limited free-to-air availability. Live top-flight sports and first-run Hollywood movies fall into this category. Ofcom decided that there is a narrow economic market for the wholesale provision of premium sports channels, specifically those containing live Premier League matches; there is also a narrow market for the wholesale supply of channels which include movies from the major six Hollywood studios shown in their first pay-TV window. Particularly relevant characteristics of these premium content markets included that content is aggregated through the collective selling of rights and price discrimination is exercised in downstream markets through content bundling.

The regulator decided that Sky has market power in the wholesale of core premium sports channels; it has consistently won the rights to televise premier league matches since 1992, its market share remains high and there are significant barriers to entry. Similarly, it has market power in the wholesale of premium movies. This gives it the ability to affect competition through distributing its premium content in a manner which favours its own platform and its own retail business, through denying content to others or making it available on unfavourable terms. It can also set high wholesale prices for content in order to maximise wholesale profits. There is evidence to support the suggestion that Sky is restricting the supply of premium content to other retailers; for example, current terms made it unprofitable for Virgin Media to sell premium channels to existing subscribers. The result is a lack of choice to consumers in relation to available content and the terms of platforms available to them.

The possible remedies identified by Ofcom were to restrict the ability of Sky to aggregate content, to require Sky to separate its wholesale business from its downstream platform and retail business or to require it to provide wholesale access to particular channels on regulated terms. Ofcom proposed the latter

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through placing a wholesale must-offer obligation on Sky, with detailed terms and conditions including an ex ante pricing rule, applying on a retail-minus basis with a cost-based analysis as a cross-check. This would be implemented using Ofcom's powers in section 316 of the Communications Act 2003 to impose licence conditions relating to competition matters. For the moment, Ofcom would not refer Sky to the general competition authorities for a more far-reaching competition investigation.

***Ofcom, "Pay TV Second Consultation", 30 September 2008***

http://www.ofcom.org.uk/consult/condocs/second_paytv/summary/

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